

January 15, 2002

**ELECTRONIC MAIL**

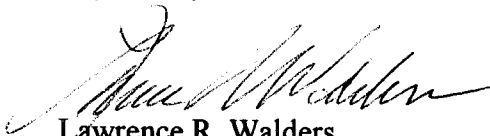
Ms. Gloria Blue, Executive Secretary  
Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20508

Re: Certain Steel Products: Responsive Comments

Dear Ms. Blue:

We are submitting herewith the responsive comments of Essar Steel, Ltd.; Ispat Industries Ltd.; Jindal Vijaynagar, Ltd.; The Steel Authority of India, Ltd.; and Tata Iron and Steel Company, Ltd. ("certain India steel producers").

Respectfully submitted,



Lawrence R. Walders  
Leigh Fraiser

For Powell, Goldstein, Frazer & Murphy LLP

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee

**CERTAIN STEEL PRODUCTS  
Potential Action Under Section 203  
of the Trade Act of 1974 With Regard  
to Imports of Certain Steel**

**RESPONSIVE COMMENTS OF ESSAR STEEL, LTD.; ISPAT INDUSTRIES LTD.;  
JINDAL VIJAYNAGAR, LTD; THE STEEL AUTHORITY OF INDIA, LTD.;  
AND TATA IRON AND STEEL COMPANY, LTD.**

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Lawrence R. Walders  
Leigh Fraiser  
Counsel to

Essar Steel, Ltd.; Ispat Industries Ltd.; Jindal  
Vijaynagar, Ltd; The Steel Authority of India, Ltd.; and  
Tata Iron and Steel Company, Ltd.

January 15, 2002

TABLE OF CONTENTS

	<u>page</u>
EXECUTIVE SUMMARY .....	1
I. THE PRESIDENT HAS THE DISCRETION UNDER U.S. LAW TO APPLY ARTICLE 9.1 ON THE BASIS OF INDIVIDUAL PRODUCTS IRRESPECTIVE OF THE COMMISSION'S LIKE PRODUCT DETERMINATION .....	2
II. INDIA'S ENTITLEMENT TO AN EXEMPTION FROM SAFEGUARDS ACTIONS SHOULD BE DETERMINED ON THE BASIS OF IMPORTS OF EACH CARBON STEEL FLAT-ROLLED PRODUCT .....	3
A. ARTICLE 9.1 PROVIDES FOR CALCULATION OF IMPORT SHARES ON THE BASIS OF INDIVIDUAL PRODUCTS RATHER THAN GROUPS OF PRODUCTS ....	3
B. CALCULATION ON THE BASIS OF ALL FLAT PRODUCTS WOULD FRUSTRATE THE PURPOSE OF ARTICLE 9.1 .....	5
C. THE ARTICLE 9.1 CALCULATIONS SHOULD BE BASED UPON THE MOST RECENT DATA THAT WAS INCLUDED IN THE COMMISSION'S INVESTIGATION .....	5
CONCLUSION .....	6

RESPONSIVE COMMENTS OF ESSAR STEEL, LTD.; ISPAT INDUSTRIES LTD.;  
JINDAL VIJAYNAGAR, LTD; THE STEEL AUTHORITY OF INDIA, LTD.;  
AND TATA IRON AND STEEL COMPANY, LTD.

EXECUTIVE SUMMARY

Article 9.1 of the WTO Agreement on Safeguards provides that developing countries such as India are entitled to an exemption from safeguards remedies if they account for less than 3 percent of total imports of a particular product and if all developing countries with less than a 3 percent share collectively account for less than 9 percent of total imports of the product. In their initial comments the Indian producers pointed out that India is entitled to an exemption from safeguards remedies on cold-rolled, plate, and corrosion-resistant steel pursuant to Article 9.1 of the WTO Agreement on Safeguards.<sup>1</sup>

The domestic integrated steel producers, however, contend that the President should not grant any exemption for developing countries with respect to carbon and alloy flat-rolled products because developing countries that individually account for less than 3 percent of total U.S. imports of carbon and alloy flat-rolled products collectively accounted for over 9 percent of total imports.<sup>2</sup> The domestic producers reached this conclusion by calculating import shares on the basis of carbon and alloy flat-rolled products as a group instead of calculating the shares on

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<sup>1</sup> See Comments of Essar Steel, Ltd; Ispat Industries Ltd.; Jindal Vijaynagar, Ltd.; The Steel Authority of India, Ltd.; and Tata Iron and Steel Co., Ltd., January 4, 2002, at 12-13. As noted below, the exemption should also be applied to imports of hot-rolled steel from India based upon imports during the period January-June 2001.

<sup>2</sup> See Comments Regarding the Action the President Should Take under Section 203(a) of the Trade Act of 1974 Filed on Behalf of Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation and United States Steel Corporation, January 4, 2002 ("Domestic Producers' Comments") at 40-41.

the basis of individual flat-rolled products. We submit that this calculation is incorrect. India's entitlement to an Article 9.1 exemption should be determined on a product-by-product basis.

**I. THE PRESIDENT HAS THE DISCRETION UNDER U.S. LAW TO APPLY ARTICLE 9.1 ON THE BASIS OF INDIVIDUAL PRODUCTS IRRESPECTIVE OF THE COMMISSION'S LIKE PRODUCT DETERMINATION.**

The domestic producers did not explain why they calculated the import shares of developing countries on the basis of imports of all carbon steel flat-rolled products. However, they may take the position that entitlement to an exemption under Article 9.1 must be based upon all carbon steel flat products because the International Trade Commission found that all carbon steel flat-rolled products constitute a single like product and that domestic production of carbon steel flat products constitutes a single domestic industry. We submit that the Commission's like product determination is unsupported by the evidence and is contrary to law. But whatever the merits of the Commission's like product determination, that determination is not binding on the President. The President has complete discretion under 19 U.S.C. §2253 to determine what action to take in response to an affirmative ITC determination. That includes the discretion to determine the manner in which the United States will comply with its international legal obligations under Article 9.1.<sup>3</sup>

The Commission's finding that all carbon steel flat-rolled products constitute a single like product is not only not binding on the President, it also has no particular relevance to the

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<sup>3</sup> The President is authorized under 19 U.S.C. §2254(e)(1) to take safeguards actions on a non-MFN basis when such action is consistent with U.S. international obligations. This provision permits the President to exempt developing countries from safeguards actions notwithstanding the requirement for non discriminatory application of any duty or other import restriction in 19 U.S.C. §2136(a).

President's remedy decision. Indeed, the Commission itself did not recommend a single remedy for all carbon steel flat products even though it found that they all constitute a single like product. Chairman Koplan and Commissioners Miller and Hillman recommended imposition of an additional tariff of 20 percent on imports of carbon steel flat-rolled products *except slab*. In the case of slab, they recommended imposition of a tariff-rate quota.<sup>4</sup> Commissioner Okun recommended that separate quotas be imposed for *each* flat product (plate, hot-rolled, cold-rolled, coated, and slab).<sup>5</sup>

Implementation of U.S. obligations under Article 9.1 is a remedy issue. The fact that the Commission itself recommended different remedies for different flat products demonstrates the lack of correlation between the like product determination and the remedy. Instead, the President should frame a remedy that fulfills the purpose of Article 9.1. That purpose would be frustrated if the import shares of developing countries were calculated by lumping together imports of different products into a single category.

## **II. INDIA'S ENTITLEMENT TO AN EXEMPTION FROM SAFEGUARDS ACTIONS SHOULD BE DETERMINED ON THE BASIS OF IMPORTS OF EACH CARBON STEEL FLAT-ROLLED PRODUCT.**

### **A. ARTICLE 9.1 PROVIDES FOR CALCULATION OF IMPORT SHARES ON THE BASIS OF INDIVIDUAL PRODUCTS RATHER THAN GROUPS OF PRODUCTS.**

Article 9.1 provides that safeguards measures shall not be applied against "a product" originating in a developing country Member as long as its share of total imports of "the product"

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<sup>4</sup> ITC Determination at 358.

<sup>5</sup> *Id.* at 427-28.

does not exceed 3 percent, and total imports from all developing countries with less than 3 percent share do not exceed 9 percent of total imports of “the product concerned”. The references to “a product” or “the product” in the singular indicate that the import shares should be calculated on the basis of individual products rather than groups of products. This interpretation is consistent with the underlying purpose of safeguards actions.

Safeguards actions have their genesis in Article XIX of the GATT. Article XIX authorizes the contracting parties to withdraw or modify trade agreement concessions in order to prevent or remedy serious injury.<sup>6</sup> Imposition of safeguards remedies includes the withdrawal or suspension of duty reductions negotiated in trade agreements, and duty reductions are implemented for specific tariff categories. It follows, therefore, that the terms “a product” and “the product concerned” in Article 9.1 of the Safeguards Agreement should be interpreted to apply to products that are provided for in specific tariff categories. There is no tariff category for carbon steel flat-rolled products as a whole in the U.S tariff schedules. Instead, each type of carbon steel flat-rolled product is provided for in a separate tariff category with a separate duty.<sup>7</sup>

The Article 9.1 calculation cannot be based upon imports of carbon steel flat-rolled products as a whole since there is no such provision in the tariff schedules. Instead, it must be based upon imports of each individual flat product.

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<sup>6</sup> GATT 1994 art. XIX (incorporating by reference GATT 1947 art. XIX..1.a).

<sup>7</sup> See, e.g. HTSUS Headings 7208 (hot-rolled steel), 7209 (cold-rolled steel), 7210 (coated steel) 7207 (slabs) 7208.51.00 (plate).

**B. CALCULATION ON THE BASIS OF ALL FLAT PRODUCTS WOULD FRUSTRATE THE PURPOSE OF ARTICLE 9.1.**

Article 9.1 was adopted in order to provide preferential treatment for developing countries by exempting them from safeguards measures under certain conditions. The individual 3 percent and cumulative 9 percent threshold levels ensure that the exemption is limited to imports from developing countries that are too small to have caused injury to the domestic industry. That is certainly true with respect to imports from India, which account for an insignificant share of total imports.

The purpose of Article 9.1 would be frustrated if a country that imposes safeguards measures could deprive developing countries of the benefits of the provision by calculating import shares on the basis of broad categories of disparate products. In that case, developing countries would lose the exemption for products that are imported in small quantities because other products that are imported in larger quantities (including products imported from other countries) are included in the calculation.

**C. THE ARTICLE 9.1 CALCULATIONS SHOULD BE BASED UPON THE MOST RECENT DATA THAT WAS INCLUDED IN THE COMMISSION'S INVESTIGATION.**

Tables 3-5 of the Indian Producers' January 4 comments calculate the Article 9.1 exemptions on the basis of imports for calendar year 2000. However, it would be more appropriate to calculate the percentages on the basis of imports during the period January-June 2001 since that is the most recent period that was considered by the Commission in its injury determination, and the period reflects current market conditions.



The institution of antidumping and countervailing duty investigations has had a severe impact on imports from India and other developing countries. Imports from India of hot-rolled steel dropped by 91 percent in the first half of 2001 compared with the same period of 2000.<sup>8</sup> Imports of Indian plate dropped by 99 percent.<sup>9</sup> As noted in our January 4 comments, the imposition of an additional duty in the Section 201 case on top of the antidumping and countervailing duties would result in total exclusion of these products from the American market. Such a result far exceeds the level of protection required to help the domestic industry adjust to import competition, and would therefore violate both U.S. law and the Safeguards Agreement.

The attached tables show that India qualifies for an exemption from safeguards remedies under Article 9.1 with respect to hot-rolled steel, cold-rolled steel, plate, and corrosion-resistant steel when import shares are measured on the basis of imports during the first half of 2001. The President should avoid imposing a prohibitive double duty burden on these imports by exempting them from safeguards remedies pursuant to Article 9.1.

## **CONCLUSION**

For the foregoing reasons, we respectfully submit that India's entitlement to an exemption from safeguards remedies under Article 9.1 of the WTO Safeguards Agreement should be determined on the basis of imports of individual products rather than on imports of all carbon steel flat-rolled products. The calculation of import shares should be based upon imports

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<sup>8</sup> Indian Producers' January 4, 2002 Comments at Table 1.

<sup>9</sup> *Id.* at Table 2.

during the first half of 2001. The President should, therefore, exempt imports of Indian hot-rolled, cold-rolled, plate and corrosion-resistant steel from any restrictions that are imposed as a result of this investigation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence R. Walders", written in a cursive style.

Lawrence R. Walders

Leigh Frasier

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**Table 1**

**U.S. IMPORTS OF HOT-ROLLED SHEET AND STRIP  
FROM WTO MEMBER DEVELOPING COUNTRIES  
JANUARY – JUNE, 2001 COMPARED TO TOTAL IMPORTS**

**In Quantity (short tons)**

**Total Imports: 1,759,659**

<b>WTO Developing Country<sup>1</sup></b>	<b>Imports from Developing Country<sup>2</sup></b>	<b>Percentage of Total Imports<sup>2</sup></b>
India	50,017	2.84
Brazil	4,644	0.26
Argentina	21,474	1.22
Thailand	15,847	0.90
Hungary	12,443	0.71
Bulgaria	11,074	0.63
Indonesia	10,726	0.61
Venezuela	7,944	0.45
South Africa	3,459	0.20
Egypt	1,832	0.10
Slovakia	1,433	0.08
<b>Total</b>	<b>140,893</b>	<b>8.00</b>

<sup>1</sup> The chart includes countries designated as beneficiary developing countries for purposes of the generalized system of preferences (GSP) under the Harmonized Tariff Schedule of the United States (HTSUS ) (2001) – Supplement 1 (Rev. 1). Developing countries listed in the HTSUS are not included in the chart if their share of imports exceeds three percent or if they have no imports for January – June, 2001.

<sup>2</sup> *Source:* Compiled from official statistics of the U.S. Department of Commerce, available on the Commission dataweb at [www.usitc.gov](http://www.usitc.gov).

**Table 2**

**U.S. IMPORTS OF COLD-ROLLED SHEET AND STRIP OTHER THAN  
GOES FROM WTO MEMBER DEVELOPING COUNTRIES  
JANUARY – JUNE, 2001 COMPARED TO TOTAL IMPORTS**

**In Quantity (short tons)**

**Total Imports: 1,426,055**

<b>WTO Developing Country<sup>1</sup></b>	<b>Imports from Developing Country<sup>2</sup></b>	<b>Percentage of Total Imports<sup>2</sup></b>
Venezuela	30,581	2.14
South Africa	25,848	1.81
Thailand	19,845	1.39
Indonesia	3,585	0.25
Chile	2,489	0.17
Slovakia	1,377	0.10
India	555	0.04
Poland	216	0.02
Czech Republic.	7	0.00
<b>Total</b>	<b>84,503</b>	<b>5.92</b>

<sup>1</sup> The chart includes countries designated as beneficiary developing countries for purposes of the generalized system of preferences (GSP) under the Harmonized Tariff Schedule of the United States (HTSUS ) (2001) – Supplement 1 (Rev. 1). Developing countries listed in the HTSUS are not included in the chart if their share of imports exceeds three percent or if they have no imports for January - June 2001.

<sup>2</sup> *Source:* Compiled from official statistics of the U.S. Department of Commerce, available on the Commission dataweb at [www.usitc.gov](http://www.usitc.gov).

**Table 3**

**U.S. IMPORTS OF PLATE FROM WTO MEMBER DEVELOPING COUNTRIES JANUARY - JUNE 2001 COMPARED TO TOTAL IMPORTS**

**In Quantity (short tons)**

**Total Imports: 398,167**

<b>WTO Developing Country<sup>1</sup></b>	<b>Imports from Developing Country<sup>2</sup></b>	<b>Percentage of Total Imports<sup>2</sup></b>
South Africa	3,104	0.78
India	1,200	0.30
Indonesia	123	0.031
Romania	2,722	0.68
Slovakia	396	0.10
Hungary	4,859	1.22
Poland	448	0.11
Bulgaria	11,904	3.0
<b>Total</b>	<b>24,756</b>	<b>6.2175</b>

<sup>1</sup> The chart includes countries designated as beneficiary developing countries for purposes of the generalized system of preferences (GSP) under the Harmonized Tariff Schedule of the United States (HTSUS ) (2001) – Supplement 1 (Rev. 1). Developing countries listed in the HTSUS are not included in the chart if their share of imports exceeds three percent or if they have no imports for January – June, 2001.

<sup>2</sup> *Source:* Compiled from official statistics of the U.S. Department of Commerce, available on the Commission dataweb at [www.usitc.gov](http://www.usitc.gov).

**Table 4**

**U.S. IMPORTS OF CORROSION-RESISTANT AND OTHER COATED  
SHEET AND STRIP FROM WTO MEMBER DEVELOPING  
COUNTRIES JANUARY – JUNE, 2001 COMPARED TO TOTAL IMPORTS**

**In Quantity (short tons)**

**Total Imports: 982,714**

<b>WTO Developing Country<sup>1</sup></b>	<b>Imports from Developing Country<sup>2</sup></b>	<b>Percentage of Total Imports<sup>2</sup></b>
India	20,761	2.11
Brazil	13,273	1.35
South Africa	7,548	0.77
Venezuela	6,811	0.69
Indonesia	5,684	0.58
Thailand	3,533	0.36
Guatemala	1,935	0.20
Colombia	377	0.04
Slovakia	196	0.02
Dominican Republic	38	0.00
<b>Total</b>	<b>60,156</b>	<b>6.12</b>

<sup>1</sup> The chart includes countries designated as beneficiary developing countries for purposes of the generalized system of preferences (GSP) under the Harmonized Tariff Schedule of the United States (HTSUS ) (2001) – Supplement 1 (Rev. 1). Developing countries listed in the HTSUS are not included in the chart if their share of imports exceeds three percent or if they have no imports for January – June, 2001.

<sup>2</sup> Source: Compiled from official statistics of the U.S. Department of Commerce, available on the Commission dataweb at [www.usitc.gov](http://www.usitc.gov).